

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
LSU ALUMNI ASSOCIATION)	File No. 0003501272
)	
Request for Reinstatement of Renewal Application)	
for EBS Station WND423 and Waiver of Section)	
1.946(e) of the Commission's Rules)	
)	

ORDER ON RECONSIDERATION

Adopted: September 2, 2009

Released: September 3, 2009

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 17, 2008, the LSU Alumni Association (LSU) filed a Petition for Reconsideration and Waiver Request¹ of the decision by the Broadband Division, Wireless Telecommunications Bureau (Division) to dismiss LSU's application² to renew Educational Broadband Service (EBS) Station WND423 for failure to timely respond to a Notice of Return. The Petition also seeks a waiver of Section 1.946(e) of the Commission's Rules, to permit LSU to file a late-filed request for extension of time to construct.³ For the reasons discussed below, we grant the Petition and reinstate the Renewal Application. With respect to LSU's request for waiver, we dismiss that request without prejudice and direct LSU to refile an application for extension of time to complete construction of Station WND423 within 30 days of the release of this *Order on Reconsideration*.

II. BACKGROUND

2. On October 20, 1995, LSU filed an application for a new EBS station in Ferriday, Louisiana.⁴ On July 30, 1998, LSU was granted an authorization.⁵ Under former Section 73.3598(b) of the Commission's Rules, LSU was to have constructed or filed an extension of time to construct on or before January 30, 2000.⁶ LSU claims that Worldcom, its excess capacity lessee, failed to timely file an extension of time to construct.⁷ Subsequently, LSU and Worldcom filed an extension of time to construct, but that application was dismissed on November 7, 2001.⁸

¹ Petition for Reconsideration and Waiver Request (filed Dec. 17, 2008) (Petition).

² File No. 0003501272 (filed Jul. 11, 2008) (Renewal Application).

³ Petition at 3; 47 C.F.R. § 1.946(e).

⁴ File No. BPIF-19951020AH (filed Oct. 20, 1995).

⁵ File No. BPIF-19951020AH (granted Jul. 30, 1998).

⁶ See 47 C.F.R. § 73.3598(b) (1998).

⁷ Petition at 2.

⁸ File No. BEIF-2001038AAA (dismissed Nov. 7, 2001).

3. On July 11, 2008, LSU timely filed an application to renew Station WND423.⁹ On August 27, 2008, the Bureau issued a Notice of Return indicating that:

According to our records, the deadline for constructing Station WND423 is January 30, 2000, and we have no record that a notification of completion of construction or a request for extension of time to construct is on file. Within 60 days of the date of this letter, please provide evidence that either (a) the station was constructed prior to the deadline, and notification of completion of construction was submitted to the Commission, or (b) evidence that a timely request for extension of time to construct was filed, and such request was granted or was never acted on.¹⁰

The Notice of Return also stated that the Bureau could not process LSU's application until LSU filed Form 602, FCC Ownership Disclosure Information, with the Bureau.¹¹ LSU did not respond to the Notice of Return within 60 days because the facilities for Station WND423 were not constructed and LSU "was not familiar with the regulatory strategies available."¹² Consequently, on November 18, 2008, the Bureau dismissed LSU's Renewal Application without prejudice.¹³

4. On December 17, 2008, LSU filed a Petition asking the Bureau to reconsider its decision dismissing its application to renew Station WND423 and to waive Section 1.946(e) of the Commission's Rules, which requires extension applications to be filed before the expiration of the construction period.¹⁴ Also on December 17, 2008, LSU filed an application for extension of time to construct Station WND423.¹⁵ On January 6, 2009, the Universal Licensing System automatically dismissed the Extension Application because the license for Station WND423 had expired and was no longer valid.¹⁶

5. LSU claims that it has worked with outside parties to educate itself and has prepared a response providing the information requested by the Bureau.¹⁷ On December 17, 2008, LSU filed Form 602.¹⁸ LSU also filed the Extension Application with a waiver request.¹⁹ LSU claims that its filings and "increased regulatory awareness" are changed circumstances that justify reconsideration.²⁰

III. DISCUSSION

6. Under Section 1.934(c) of the Commission's Rules, an application may be dismissed for failure to prosecute "for failure of the applicant to respond substantially within a specified time period to

⁹ Renewal Application.

¹⁰ Notice of Return to LSU Alumni Association, Ref. No. 4776876 (dated Aug. 27, 2008) (Notice of Return) at 1.

¹¹ *Id.* at 2.

¹² Petition at 1.

¹³ Notice of Dismissal, Ref. No. 4804658 (dated Nov. 18, 2008). Public notice of the dismissal of the Renewal Application was given on November 19, 2008. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 4522, *Public Notice* (Nov. 19, 2008) at 1.

¹⁴ 47 C.F.R. § 1.946(e).

¹⁵ File No. 0003680212 (filed Dec. 17, 2008) (Extension Application).

¹⁶ Notice of Dismissal, Ref. No. 4821934 (Jan. 6, 2009).

¹⁷ Petition at 2.

¹⁸ Form 602, LSU Alumni Association, File No. 0003680163 (filed Dec. 17, 2008).

¹⁹ Extension Application.

²⁰ Petition at 2.

official correspondence or requests for additional information.”²¹ The Bureau’s practice is to send a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. The Notice of Return plainly states that “[i]f you do not file an amendment to your application within 60 days of the date on the top of this letter, your application will be dismissed.” Thus, LSU was placed on notice that its application would be dismissed if it failed to respond to the return letter. LSU’s explanation, that it was unaware of its options, however, is not a sufficient reason for its failure to respond to the Notice of Return. Therefore, we find that LSU failed to respond, and that it does not offer any legitimate explanation for its failure to respond. Accordingly, we conclude that the dismissal of its application to renew Station WND423 was proper.

7. Notwithstanding LSU’s failure to respond to the Notice of Return, we will grant the Petition and reinstate the Renewal Application. In 2006, the Bureau found that it was in the public interest to reinstate three EBS renewal applications although the applicants had failed to respond to notices of return.²² The Bureau noted the leniency of the former Mass Media Bureau in dealing with EBS licensees, the potential loss of educational service, and the fact that no educational licensee would be able to reapply for the spectrum in the near future until the Commission developed a new mechanism for licensing unassigned EBS spectrum.²³ We conclude that LSU is similarly situated to the applicants in *Junior College District*. While we do not condone LSU’s failure to respond to the Notice of Return, there is no evidence that LSU acted in bad faith. As in *Junior College District*, we conclude that denying LSU another opportunity to provide the information requested by the Bureau and to put its license to use would not be in the public interest. We therefore grant the Petition and reinstate the Renewal Application to pending status.

8. We note that in *Junior College District*, the Bureau reminded EBS licensees to exercise due diligence in complying with all our rules and emphasized the importance of timely responses to Commission requests for information.²⁴ The Bureau warned that it “reserve[d] the right to refuse to reinstate applications when an applicant fails to respond to a return letter.”²⁵ We do not believe exercising that right is appropriate in this case because of the lack of evidence of bad faith and because the Commission is still in the process of establishing a mechanism for licensing unassigned EBS spectrum.²⁶ We note that we may reach a different conclusion if presented with a different fact pattern or change in circumstances.

9. We dismiss the Waiver Request without prejudice because the Extension Application was dismissed by ULS. LSU shall have 30 days from the release date of this *Order on Reconsideration* to refile an application for extension of time to construct Station WND423, along with a request for waiver of Section 1.946(e) of the Commission’s Rules. If LSU fails to file a new extension application within 30 days, the licensing staff of the Broadband Division shall dismiss the Renewal Application for failure to prosecute.

²¹ 47 C.F.R. § 1.934(c).

²² See *Junior College District of Metropolitan Kansas City, Missouri, et al., Order on Reconsideration*, 21 FCC Rcd 13770 (WTB 2006) (*Junior College District*).

²³ *Id.* at 13774-13775 ¶ 10.

²⁴ *Id.* at 13775 ¶ 11.

²⁵ *Id.*

²⁶ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6060-6068 ¶¶ 180-204 (2008).

IV. CONCLUSION AND ORDERING CLAUSES

10. The decision to dismiss the LSU's renewal application at issue was correct. Based upon the information provided in the Petition, we have decided to grant the Petition and reinstate the Renewal Application. We dismiss the Waiver Request without prejudice because the Extension Application was dismissed after the Petition was filed. LSU shall refile an extension application with waiver request within 30 days of the release of this *Order on Reconsideration*.

11. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.934 of the Commission's Rules, 47 C.F.R. §§ 1.106 and 1.934 the Petition for Reconsideration filed by the LSU Alumni Association on December 17, 2008, IS GRANTED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.946(e), that the Broadband Division SHALL REINSTATE AND PROCESS the application for renewal of license filed by LSU Alumni Association (File No. 0003501272) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.946(e), that the request for waiver of Section 1.946(e) of the Commission's Rules filed by LSU Alumni Association on December 17, 2008 IS DISMISSED WITHOUT PREJUDICE.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, that within 30 days of the release of this *Order on Reconsideration*, LSU Alumni Association SHALL REFILE an application for extension of time to construct Station WND423, along with a request for waiver of Section 1.946(e) of the Commission's Rules.

15. These actions are taken under designated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
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